

REMARKS

Claims 15-51 are pending. Claims 1-14 are withdrawn as directed to an unelected restriction group. Claims 15 and 16 are amended. Support for these amendments come from original claim 5 and [0102] of the published application and elsewhere throughout the Specification.

Outstanding Issues:

- Claims 36-38 are objected
- Claims 15-51 are rejected as indefinite under 35 U.S.C. 112 ¶ 2
- Claims 16-18, 21-23 and 26-51 are rejected as anticipated under 35 U.S.C. 102(b) by Mita et al. (U.S. Patent 5,561,109, published October 1, 1996)
- Claims 16-18, 21-23 and 26-51 are rejected as anticipated under 35 U.S.C. 102(a) by Boyko et al. (WO2002/03910, published January 17, 2000)

I. Claims 36-38 are objected

The typographical errors identified by the Examiner were not intended as amendments and were obvious errors. Applicant has corrected the text in this amendment to reflect the original filed claims with the proper Greek symbols.

II. Claims 15-51 are rejected as indefinite under 35 U.S.C. 112 ¶ 2

Claim 15 has been amended to incorporate the referenced claim 5 (now withdrawn).

Applicant respectfully disagrees that claims 34 and 35 are indefinite. “A chemokine or a cytokine” means one or more chemokine or cytokine. The terms “chemokine” and “cytokine” are terms of art for a genus of biological signaling molecules. These terms are

well defined in the art and therefore not indefinite to one of skill in the art. The Examiner's observation that a specific chemokine or cytokine is not recited does not make the claim indefinite.

Applicant respectfully disagrees that the claims are indefinite for failure to recite a specific outcome. The claims are to a method of treating wounds. Treating is defined in the Specification:

[0057] The term "treating" and "treatment" as used herein refers to administering to a subject a therapeutically effective amount of a recombinant human lactoferrin composition so that the subject has an improvement in the disease. The improvement is any improvement or remediation of the symptoms. The improvement is an observable or measurable improvement. Thus, one of skill in the art realizes that a treatment may improve the disease condition, but may not be a complete cure for the disease.

Thus, the outcome is encompassed within the meaning of treating. One of skill in the art, *e.g.* a wound specialist physician, would not find the claim unclear or ambiguous, in view of the definition in the Specification. Applicant understands the claim language is examined under the broadest reasonable interpretation rule. MPEP 2111. However, this is not license to ignore express definition in the Specification and construe a term differently for Examination purposes. MPEP 2111.01 (III); 2111.02 (II); *Jansen v. Rexall Sundown, Inc.*, 342 F.3d 1329, 1333-34, 68 USPQ2d 1154, 1158 (Fed. Cir. 2003) (In a claim directed to a method of treating or preventing pernicious anemia in humans by administering a certain vitamin preparation to "a human in need thereof," the court held that the preamble is not merely a statement of effect that may or may not be desired or appreciated, but rather is a statement of the intentional purpose for which the method must be performed. Thus the claim is properly interpreted to mean that the vitamin preparation must be administered to a human with a recognized need to treat or prevent pernicious anemia.). Applicant respectfully requests the rejection be withdrawn.

III. Claims 16-18, 21-23 and 26-51 are rejected as anticipated under 35 U.S.C. 102(b) by Mita et al. (U.S. Patent 5,561,109, published October 1, 1996)

The Examiner has cited Mita et al. for disclosing use of a lactoferrin eyedrop solutions to treat corneal injury. Claim 16 has been amended to exclude ophthalmic wounds. MPEP 2173.05(i). All other rejected claims depend from claim 16 directly or indirectly. Thus, Mita et al. is distinguished from the pending claims as amended. Applicant respectfully requests the rejection be withdrawn.

IV. Claims 16-18, 21-23 and 26-51 are rejected as anticipated under 35 U.S.C. 102(a) by Boyko et al. (WO2002/03910, published January 17, 2000)

The Examiner has cited Boyoko et al. as demonstrating Lactoferrin treatment of oral mucous membrane ulceration by gelatin bolus based buccal administration. Claim 16 has been amended to exclude buccal administration. MPEP 2173.05(i). All other rejected claims depend from claim 16 directly or indirectly. Thus, Boyoko et al. is distinguished from the pending claims as amended.

The Examiner cites various other portions of the Boyoko reference showing, for instance, oral administration of a Lactoferrin solution. These other sections of Boyoko do not relate to treating wounds. The Examiner is not permitted to pull together unrelated materials within a reference to create an anticipatory teaching. MPEP 2131. Applicant respectfully requests the rejection be withdrawn.

In view of the above, applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2375, under Order No. HO-P02652US1 from which the undersigned is authorized to draw.

Dated: September 26, 2006

Respectfully submitted,

By ALLEN E. WHITE
Allen E. White, Ph.D.
Registration No.: 55,727
FULBRIGHT & JAWORSKI L.L.P.
Fulbright Tower
1301 McKinney, Suite 5100
Houston, Texas 77010-3095
(713) 651-5151
(713) 651-5246 (Fax)
Attorney for Applicant